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SUBJECT: Guangzhou Stakes New Territory in Transparency

(U) This document is sensitive but unclassified. Please protect accordingly.

¶1. (SBU) SUMMARY: Guangzhou will implement two transparency regulations in 2007 that are reportedly the first of their kind in China and signal a shift to more local government accountability. One requires public discussion of all draft administrative regulations; the other allows the public to request information from the government in ways that echo the U.S. Freedom of Information Act. Scholars from Yale and Beijing University consulted with the Guangzhou Office of Legislative Affairs in drafting the regulations. Though the measures reflect progress that has its roots in Guangzhou's long-standing economic openness and relative political independence, the regulations are nevertheless only first steps and will need to be supported through more detailed implementing regulations and strong backing from city leadership. END SUMMARY

Public Participation in Draft Legislation

¶2. (U) The Measures on Public Participation in the Formation of New Regulations in Guangzhou, released July 7, 2006 and effective January 1, 2007, are China's first detailed local measures that require all new administrative regulations to go through a notice and comment period before taking effect. The government solicits comments in part through informal public meetings and formal consultations with experts. More importantly, the public can submit written comments, all of which must be posted on government websites. The public has at least one month to submit comments and foreigners are also allowed to participate. The relevant government bureau must post written responses to each comment (thus guaranteeing that they read the comments).

¶3. (SBU) The government has already tested these measures on several recent draft laws. Guangzhou officials organized informal public hearings with business owners, consumers, academics, and officials to discuss a law on the administration of commodity exchange markets. They also posted drafts of the law in the entryways of local markets. Professor Liu Wenjing of Jinan University's Law School said it was the first time that a Guangzhou law has undergone such broad and intense scrutiny. When officials sought comments on a recent law on community housing issues, they organized separate hearings for residents of old neighborhoods, new neighborhoods, housing compounds, and outlying rural communities. Other draft laws for public review addressed electricity prices, physical exercise in public areas, and a ban on motorcycles in the city.

Guangzhou's "Freedom of Information Act"

¶4. (U) The Measures on the Sharing of Government Information Upon Request, released November 20, 2006 and effective in July 2007, share some of the same features regarding transparency as the measures on public participation in paragraph 2. These measures mark the first time a local government in China has set up a system for the public to request government information. Under the measures, municipal bureaus must designate staff to receive requests and must publicize contact information. The public can make requests in person or in writing, and there is no fee. Officials must respond to requests within 45 days or face administrative penalties. Again, foreigners are allowed to participate.

¶5. (SBU) The government will have significant leeway on whether or not to release requested information as the measures list eight general categories of information that are off limits. The categories include state secrets, commercial secrets, personal information, information on leaders' honesty (corruption), internal official documents, law enforcement information, information legally prohibited to be shared, information already released to the public, and draft legislation (presumably before it is released for comment under the aforementioned measures).

Involvement of U.S. and Beijing Scholars

¶6. (U) In formulating these two measures, Guangzhou's Office of Legislative Affairs consulted with academics from Yale University's China Law Center and Beijing University's Center for Public Participation Studies and Support. Yale's China Law Center has been working since 2003 with local governments in Beijing, Guangzhou, and Shanghai on developing transparent mechanisms for public participation in administrative rulemaking. Wang Xixin of Beijing University established the Center for Public Participation Studies and Support, with the assistance of Yale, as China's first such

GUANGZHOU 00032442 002 OF 002

advocacy center. Wang also helped draft an "administrative procedures act" that the NPC Standing Committee is currently reviewing.

¶7. (U) Guangzhou hosted a workshop in July 2006 on public participation in rulemaking that included academics from Yale, American University, and Beijing University and officials from the Guangzhou, Beijing, Shanghai, and Shenzhen Offices of Legislative Affairs. In addition to discussing Guangzhou's transparency measures, U.S. participants highlighted the importance of NGOs in channeling input to government and the use of tools such as listserves and informal meetings, according to a report by Jamie Horsley, Deputy Director of Yale's China Law Center and a former lawyer who worked in Beijing in the late 1990s.

The Role of the Office of Legislative Affairs

¶8. (SBU) Though most observers point to Guangzhou's long history of economic openness and relative political independence as the reasons it has moved forward with these measures, others also cite Guangzhou's Office of Legislative Affairs as a driving force. The office, which includes approximately 30 legal advisors and falls under the Municipal People's Congress, is responsible for drafting city laws. Many of the office's staff are reportedly influenced by Western legal thinking. According to Shu Yang, Director of the Guangzhou Academy of Social Sciences, the office has drafted laws that "are as good as anything in the West," but city officials typically demand revisions because of concerns they have gone too far.

¶9. (SBU) Li Li, former Director of Guangzhou's Office of Legislative Affairs and now Vice Director of the Standing Committee of the Municipal People's Congress, was cited by several academics as an important backer of the new measures and a driving force behind a trend in Guangzhou since 2003 toward more government transparency. Li's promotion to her current position is highly unusual for a legal professional and signals her influence. Li was a lecturer and then dean of Guangzhou University's law school before joining the Office of Legislative Affairs. Chen Licheng, current Director of

Guangzhou's Office of Legislative Affairs, studied law in England and previously worked as a legal advisor to the Shenzhen government, a lawyer in a Shenzhen law firm, and a law professor at Xiamen University. His expertise is in economic law and he is also considered a forward thinker.

Comment: A First Step

¶10. (SBU) Professors and legal observers all noted that, though these two measures are important, implementation will prove their significance. To comply with the measures, government bureaus will need to expend additional staff time and will lose some of their autonomy. The measures on public participation will slow the city's legislative process. When dealing with sensitive issues, local officials may be more concerned with protecting their careers than complying with the letter of the law. This is particularly true for the measures on information sharing, which still offer significant room for denial to skittish officials.

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